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CONTRACTS — SUITS BY THIRD PERSONS NOT PARTIES TO THE CONTRACT — SOLE BENEFICIARY: EFFECT OF RESCISSION BY CONTRACTING PARTIES. — The defendant, as part consideration for land deeded to him by his father, promised him to pay the plaintiff, the defendant's niece, a sum of money when she reached the age of eighteen. Before the plaintiff had any notice of the contract, it was rescinded by the contracting parties. She now sues for the money. *Held*, that she can recover. *Wetutzke v. Wetutzke*, 148 N. W. 1088 (Wis.).

This decision is entirely in accord with principle. A contract for the sole benefit of a third party should vest an irrevocable right in him immediately. His consent, as in the case of a gift of property, should be presumed from the beneficial nature of the transaction. If, however, the contract is one to discharge a debt owed by the promisee, the creditor should have no right to object to rescission by the parties unless, the debtor being insolvent, this amounts to a fraudulent disposition of a valuable asset. See WILLISTON'S WALD'S POLLOCK, CONTRACTS, pp. 273, 274. A few jurisdictions recognize this distinction. *Thompson v. Gordon*, 3 Strobb. (S. C.) 196; *Youngs v. Trustees*, 31 N. J. Eq. 290; *Willard v. Worsham*, 76 Va. 392. But the majority of cases say in general terms that the contracting parties may rescind a contract for the benefit of a third person at any time before the latter consents. *Gilbert v. Sanderson*, 56 Ia. 349, 9 N. W. 293; *Trimble v. Strother*, 25 Oh. St. 378; *Spaulding v. Henshaw*, 80 Ky. 55; *Blake v. Atlantic National Bank*, 33 R. I. 464, 82 Atl. 225; *Carnahan v. Tousey*, 93 Ind. 561. In at least one of these jurisdictions, however, the result of the principal case might be reached on the ground that the consent of an infant sole beneficiary would be presumed. See *Richards v. Reeves*, 149 Ind. 437, 49 N. E. 348. The jurisdiction of the principal case, on the other hand, appears to forbid rescission in all cases. See *Zwietusch v. Becker*, 153 Wis. 213, 140 N. W. 1056. Codes or statutes in several states provide that contracts for the benefit of a third party may be sued on by the third party at any time before the contracting parties rescind. CIV. CODE CAL., § 1559; REV. L. OKLA. 1910, § 895; CIV. CODE SO. DAK., § 1193. Foreign codes, also, generally require notice of assent by the third party to prevent revocation. See 16 HARV. L. REV. 43 ff.

CRIMINAL LAW — ATTEMPT — ACCEPTANCE OF BRIBE BY PUBLIC OFFICIAL FOR PURPOSES OF DETECTION. — The defendant offered the state's attorney a bribe if he would drop certain criminal proceedings. The state's attorney, in order to trap the defendant, accepted the money. The Illinois Criminal Code, HURD'S REV. STAT. 1913, c. 38, § 31, provides that whoever corruptly gives money to a state's attorney with intent to influence him in his official capacity is guilty of bribery, and punishable by imprisonment. Section 32 imposes a fine for an "offer or attempt to bribe" a state's attorney. *Held*, that the defendant is not guilty of bribery, and can be convicted only for an attempt. *People v. Peters*, 106 N. E. 513 (Ill.).

At common law the distinction between bribery and an attempt to bribe was largely academic; both were misdemeanors, and equally punishable. *Walsh v. People*, 65 Ill. 58; 2 BISHOP, CRIMINAL LAW, 8 ed., § 88. Hence the subject is much confused in the books. A corrupt offer of money, though rejected, was sometimes treated as the substantive offense. See 1 HAWK. P. C., 6 ed., 32; COKE, 3 INST., 147, § 3; MAY, CRIMINAL LAW, 2 ed., § 140. Lord Mansfield, however, considered it a mere attempt. See *Rex v. Vaughan*, 4 Burr. 2494, 2500. And it is classed as such in the Illinois statute. But a delivery of money on corrupt terms, to one who professes to accept the terms, would seem to constitute the complete crime. *Henslow v. Fawcett*, 3 A. & E. 51. But see *Newman v. People*, 23 Col. 300, 305, 47 Pac. 278, 280. The bribe-giver's wrongful act consists in corruptly exerting pressure on a public official, and this

is accomplished when the bribe money is delivered, if not before. See *Sulston v. Norton*, 3 Burr. 1235, 1237. The court's contention that, as the state's attorney was not bribed, the defendant could not have bribed him, is a play on words. Bribe-giving and bribe-taking are separate and independent crimes, though called by the same name. See *State v. Dudoussat*, 47 La. Ann. 977, 997, 17 So. 685, 687. That the state's attorney participated in the crime for purposes of detection is of course no defense. *People v. Mills*, 178 N. Y. 274, 70 N. E. 736; *Minter v. State*, 159 S. W. 286 (Tex.). Had he instigated the crime, some jurisdictions would have excused the wrongdoer. *O'Brien v. State*, 6 Tex. App. 665. *Contra*, *Grimm v. United States*, 156 U. S. 604. See 18 HARV. L. REV. 65. But mere participation is a defense only where it negatives an essential element of the crime. *Rex v. Martin*, R. & R. 196.

CRIMINAL LAW — SENTENCE — EFFECT OF COMMUTATION. — A convict had served over twenty years of a life term when the state board of pardons commuted the sentence to imprisonment for thirty years. Had this been the sentence at the outset, the convict would already have been entitled to release by reason of good behaviour. *Held*, that the convict must be discharged. *State ex rel. Murphy v. Wolfer*, 148 N. W. 896 (Minn.).

The court proceeded upon the theory that commutation substitutes one sentence for another. See *Lee v. Murphy*, 22 Gratt. (Va.) 789, 799; *Johnson v. State*, 63 So. 163 (Ala.). Accordingly, it reasoned that after commutation the status of the prisoner was necessarily the same as though the original term had been but thirty years, and so held him entitled to deductions for prior good behavior, under the statute granting this allowance to all but life convicts. MINN. GEN. STAT., 1913, § 9309. With due respect, however, it is submitted that no rigid legal rule requires that commutation invariably operate as if the lesser sentence had been first imposed. On the contrary, the intent of the pardoning power should be controlling. Thus it has been held that commutation to "nine years actual time" precluded any deduction for good behavior. See *In re Hall*, 34 Neb. 206, 51 N. W. 750. Moreover, the circumstance that if prior good time were allowed, the prisoner could claim his discharge twenty-three days after commutation, has been taken to indicate that previous good behavior was not to be considered. *In re McMahon*, 125 N. C. 38, 34 S. E. 193. This authority the principal case seeks to distinguish on the purely formal ground that the Minnesota statute states expressly that "good time" should begin on arrival in prison. But it would seem that in the present case there was all the more reason for excluding allowances for prior good behavior from the "thirty years" when the opposite construction made discharge in fact overdue at the time of commutation. A result like that of the principal case should be attained where, and only where, the commuting authority intends a complete substitution of the new sentence with its concomitant legal consequences.

DEAD BODIES — NEGLIGENT MUTILATION — RIGHT OF RECOVERY FOR MENTAL ANGUISH BY RELATIVE OTHER THAN NEXT OF KIN. — The mother of a boy killed on the defendant railroad sued the company for mental anguish caused by the negligent mutilation of the dead body. The father, who was living, was by statute the next of kin. *Held*, that the mother cannot recover. *Floyd v. Atlantic Coast Line Ry. Co.*, 83 S. E. 12 (N. C.).

In England the law recognizes no property right in a corpse. *Williams v. Williams*, 20 Ch. D. 659. In this country a dead body is not property in the absolute sense of the word. But the great weight of authority holds that a legal "quasi-property" right to the possession of the dead body for the purpose of burial vests first in the surviving wife or husband, and then in the next of kin. Any wilful or wanton mutilation of the body will be a violation